IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2530 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M. B. PATHAN

Versus

G.S.R.T. CORPORATION

Appearance:

1. Special Civil Application No. 2530 of 1990

MR AK CLERK for Petitioner No. 1

MR PRANAV G DESAI for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/01/2004

ORAL JUDGEMENT

This petition has been filed by the petitioner workman Mr. M. B. PATHAN against the respondent ST

Corporation. The petitioner was served with the show cause notice dated 30th March, 1989 alongwith the findings wherein proposed punishment is suggested and the petitioner was asked to show cause as to why he should not be dismissed from service. It is the contention raised by the petitioner that on 21/22nd September, 1989, his name was forwarded by the Union to the Corporation as a protected workman for the year 1989-90. At the relevant time, the petitioner was working as Art. "A" at Borsad Depot under the Nadiad Division. The list was forwarded by the General Secretary of the Union. The date of the show cause notice is 30th March, 1989. Rule 66 of the Industrial Disputes (Gujarat) Rules, 1966 provides that the Union has to forward the list of protected workmen before 30th September of every year. Here, such list was apparently forwarded by the Union on 21/22nd September, 1989 and such list was to remain in operation upto 1st October, 1990.

No affidavit in reply has been filed by the respondent corporation. However, during the course of hearing, learned advocate Mr. Desai appearing for the respondent Corporation has vehemently opposed the present petition only on the ground that the petition is at the stage of show cause notice and, therefore, not maintainable. Learned advocate Mr. Clerk appearing for the petitioner has submitted that after the reply was submitted by the workman before the Corporation, the Corporation has taken decision to dismiss the workman but only because of the interim orders passed by this Court, it has not been communicated to the petitioner and has not been implemented so far. In such a situation, considering the legal effect of the list of protected workmen, as per rule 66 of the said Rules, 1966, that period was over on 1st October, 1990. Both the parties are agreeing to one fact that the workmen are working with the corporation and the decision of dismissal or decision upon the show cause notice has so far not been implemented by the respondent corporation. Therefore, in view of these facts, the petitioner is working with the Corporation and now if the petitioner is declared to be the workman for the year 2003-2004, then, in view of that, the Corporation has to take prior permission from the concerned authority before whom the dispute is pending under section 33 of the I.D. Act, 1947. However, it is made clear that if the name of the petitioner is not declared as a protected workman for the year 2003-04, then, the Corporation shall be free to pass appropriate orders in accordance with law in that regard. With these observations and directions, this petition is disposed of. Rule is discharged. Interim relief if any

shall stand vacated forthwith. There shall be no order as to costs.

[H.K. Rathod,J.]

Vyas